

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Ivanna R.,

Claimant,

v.

San Diego Regional Center,

Service Agency.

Case No. 2011010703

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 22, 2011.

The San Diego Regional Center (SDRC) was represented by Ronald House, Attorney at Law.

Ivanna R. (Ivanna or claimant) was represented by her mother, Livia R.

The matter was submitted on March 22, 2011.

ISSUE

Should claimant's respite services be reduced from 16 hours per month to 12 hours per month?¹

¹ SDRC's Notice of Proposed Action originally sought to reduce Ivanna's respite services to four hours per month, but at hearing SDRC stipulated that it had re-evaluated her case and now only sought to reduce the respite services to 12 hours per month.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 5, 2011, claimant filed a Fair Hearing Request to appeal from SDRC's determination that her respite services should be reduced.

2. On March 22, 2011, the record was opened, jurisdictional documents were presented, documentary evidence was received, sworn testimony and closing arguments were given, the record was closed, and the matter was submitted.

Evidence Introduced At Hearing

3. Ivanna is presently four years, nine months old. She qualifies for regional center services based upon her diagnosis of mental retardation.

4. Ivanna's first IPP, which is dated November 10, 2009, stated that Ivanna lives with her mother and 13-year-old brother. Ivanna requires complete assistance with all care needs. Ivanna is non-verbal. The November 2009 IPP stated that Ivanna was scheduled for an audiology screening in December 2009, as well as a tonsillectomy and placement of ear tubes. Ivanna attends a Head Start program in the mornings and a Special Education pre-school class in the afternoon. Ivanna receives SSI and Medi-Cal benefits. Ivanna has many extended family members who live in San Diego. Ivanna was described as a loving and friendly child. Ivanna requires constant supervision due to her age and her constantly mouthing objects.

5. A June 22, 2010, SDRC Annual Health Status Review reported that Ivanna's December 2009 surgeries went well

6. A June 22, 2010, SDRC Family Respite Needs Assessment Summary Sheet reported that Ivanna does not receive IHSS protective supervision services, that she was not medically fragile, that she did not receive county-funded respite services, and that she had no generic resources other than SSI. Ivanna had no medical needs related to her developmental disability. She had no mobility problems. Ivanna had approximately three tantrums per day, she was non-verbal and demonstrated her frustration by throwing herself on the floor and hurling objects. She continued to mouth objects. Constant supervision was required. Ivanna's respite needs were scored and the total value she received was between two and four, which reflected "routine supervision," the same kind of supervision that any four-year-old child without a developmental disability would require. Based upon that score, SDRC recommended a "step down" reduction of Ivanna's respite hours over the next year, initially reducing the respite hours by four hours per month every quarter.

7. An SDRC Person/Family Centered Planning Individual Program Plan (IPP) Addendum was signed by Ivanna's mother on June 22, 2010. The mother agreed to SDRC's plan to reduce Ivanna's respite hours by four hours every quarter beginning July 1, 2010. Ivanna's mother thereafter rescinded her agreement by filing the request for a fair hearing.

8. A Family Respite Needs Assessment Guideline that was produced described respite services and explained the scoring method used to determine the extent of a consumer's need for respite services.

9. Ivanna's SDRC Annual Review stated that Ivanna had a diagnosis of mild mental retardation and chromosomal abnormalities, Down syndrome.

10. Ivanna's 2010 Annual Review Progress Report, dated June 22, 2010, noted that since her surgery, Ivanna has experienced fewer ear infections. She continued to have tantrums and she continued to mouth objects, which required constant supervision. Ivanna remained non-verbal. The step-down of respite hours was discussed, and Ivanna's mother was assured respite needs would be re-evaluated yearly.

11. Bill Stein, SDRC's Due Process Coordinator, and Gloria Garcia, Ivanna's Consumer Services Coordinator, testified about Ivanna's needs, explaining that during SDRC's evaluation, it was determined that Ivanna's needs did not exceed those of a child her same age who was not diagnosed with a developmental disability, and that that determination resulted in SDRC's original decision to reduce her hours to four per month. Thereafter, SDRC re-evaluated Ivanna's case, taking into account that Ivanna's mother is a full-time student. SDRC also evaluated Ivanna as a five-year-old consumer, rather than a four year old consumer, since Ivanna was almost five, which increased her scores for respite and authorized SDRC to offer her 12 hours of respite per month.

12. Ivanna's mother testified that she lives alone with her two children and that she uses her respite hours to spend time with her thirteen-year-old son.

LEGAL CONCLUSIONS

Burden of Proof

1. The burden of proof is to law what inertia is to physics—a built-in bias in favor of the status quo. (See Evid. Code, § 500.) If a party requests a change in the status quo, that party must present evidence sufficient to overcome the state of affairs that would exist if the court did nothing. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388-1389.) In the absence of any authority to the contrary, the burden of proof is a preponderance of the evidence. (Evidence Code section 115.)

In this matter, the burden is on the service agency to establish by a preponderance of the evidence that good cause supports the reduction of respite services from 16 hours per month to 12 hours per month.

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

“The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.”

4. A regional center must develop and implement an “individual program plan” (IPP) for each consumer which specifies the consumer’s needs for services and supports. These services and supports must appear in statements of goals and also specific time-limited objectives in the IPP. Goals and objectives “shall be stated in terms that allow measurement of progress or monitoring of service delivery.” (Welf. & Inst. Code, § 4646.5, sub. (a)(2).)

5. The IPP must be reviewed, reevaluated and modified no less than once every three years by a planning team composed of regional center staff, the consumer, and (where appropriate) the consumer’s parents, to ascertain whether the planned services have been provided and the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code, § 4646.5, sub. (b).)

6. Welfare and Institutions Code section 4646, subdivision (d) provides:

“Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained from

generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.”

7. Welfare and Institutions Code section 4648 states in part:

“In order to achieve the stated objectives of a consumer’s individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer’s individual program plan...

(2) . . . Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer . . . which the regional center . . . determines will best accomplish all or any part of that consumer’s program plan.”

. . .

(8) “Regional Center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

8. Welfare and Institutions Code section 4686.5, subdivision (l) provides that respite services are intermittent or regularly scheduled temporary care and/or supervision of a child with a developmental disability whose needs exceed those of an individual of the same chronological age without a developmental disability.

9. California Code of Regulations, title 17, section 54000 provides in part:

“(a) ‘Developmental Disability’ means a disability that is attributable to

mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation...”

Appellate Authority

10. The purpose of the Lanterman Act is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

11. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

Evaluation

12. A preponderance of the evidence established that Ivanna’s needs do not greatly exceed those of a five-year-old child without a developmental disability. The SDRC guidelines related to respite services are reasonable and were properly applied in this matter. Thus, SDRC’s decision to reduce claimant’s respite hours to 12 hours per month was supported by a preponderance of the evidence.

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ORDER

Claimant's appeal from the San Diego Regional Center's determination that her respite services should not be reduced from 16 to 12 hours per month is denied. SDRC may reduce Ivanna's respite services to 12 hours per month.

DATED: April 7, 2011

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.